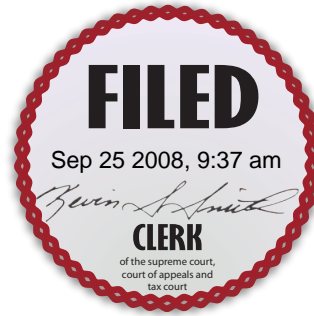


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

MARCE GONZALEZ, JR.
Dyer, Indiana

ATTORNEYS FOR APPELLEE:

STEPHEN R. CARTER
Attorney General of Indiana
Indianapolis, Indiana

NICOLE M. SCHUSTER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

TIMOTHY DION HAMPTON,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 45A03-0804-CR-196

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0503-MR-00003

SEPTEMBER 25, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

GARRARD, Senior Judge

Hampton was tried and convicted of Class A felony battery and Class D felony neglect of a dependent. He was also found in direct contempt of court for outbursts in proceedings prior to the trial. Another panel of this court vacated his neglect conviction on double jeopardy grounds and confirmed his thirty-seven year sentence for Class A felony battery.

In this appeal he seeks review of the trial court's refusal to permit a belated appeal pursuant to Ind. Post-Conviction Rule 2 of the orders finding him in contempt and imposing sentences of one year on each offense with those sentences to be served consecutively.

Because the trial court denied his petition without hearing, we owe that decision no deference and review the matter *de novo*. *Baysinger v. State*, 835 N.E.2d 223, 224 (Ind. Ct. App. 2005).

To be entitled to relief under P-C.R. 2 a defendant must show that he failed to file a timely notice of appeal; that this failure was not due to his fault; and, that he has been diligent in requesting permission to file under this rule. P-C.R. 2, § 1 (a).

Hampton's petition certainly fails to provide the specificity, by assertion or by accompanying attachments, that we prefer in P-C.R. 2 matters.

It does assert that the failure to file a timely notice of appeal was not his fault and that he has been diligent in pursuing the matter. It reports that the contempt judgments were separate final judgments which should have been followed by their own notice of appeal (a fact which possibly explains why Hampton's appellate counsel did not pursue an appeal of the contempts earlier when the underlying case was appealed.)

The state's response is that the delay should be imputed to Hampton because, although his trial counsel may not have understood, the appellate counsel did understand the necessity of directly appealing the contempts but did not do so for several months. It proffers no assertion that Hampton had actual knowledge that the contempts were separately appealable with separate time limitations.

Ordinarily, finding that the petition was sufficient to raise a question we would remand to the trial court with instructions to conduct a hearing.

The record is clear, however, that the court did not advise Hampton that he was entitled to appeal the three findings of direct criminal contempt. It is further clear that the court did not advise Hampton that he was entitled to a jury trial on each of the contempts, unless he agreed to waive that right.

The Supreme Court in *Cheff v. Schnackenberg*, 384 U.S. 373, 380, 86 S.Ct. 1523, 1526, 16 L.Ed.2d 629 (1966) decided that sentences up to six months might be imposed for criminal contempts without guilt or innocence being determined by a jury. Sentences exceeding six months may not be imposed absent a jury trial or waiver thereof.

This Sixth Amendment rule was applied in Indiana in *Holly v. State*, 681 N.E.2d 1176, 1177-1178 (Ind. Ct. App. 1997). Finding that the trial court had correctly found Holly guilty of direct contempt, the court of appeals determined that the proper remedy was to remand with instructions that the court re-sentence Holly to a sentence not exceeding six months.

We have determined that Hampton's outbursts clearly constituted three separate direct contempts of court

Accordingly, in view of the clear constitutional error and as a matter of judicial economy in keeping with App. R. 66(D), we reverse the order denying permission to take a belated appeal, we grant the appeal and determine that the trial court committed reversible error when it imposed one year sentences for Hampton's direct criminal contempts without granting him a jury trial thereon or securing a waiver of his right to jury trial. We therefore remand to the trial court with instructions to impose sentences not exceeding six months on each contempt as prescribed by *Holly v. State, supra*.

Reversed and remanded with instructions.

NAJAM, J., and BARNES, J., concur.